

UNITED STATES PATENT OFFICE

In Re Application of: § Confirmation Number:
Michael Orr § 5618
Serial No.: § Group Art Unit:
09/788,545 § 3627
Filed: § Examiner:
Feb 21, 2001 § REFAI, Ramsey
Title: A SYSTEM AND METHOD TO § Atty. Docket Number:
ACCELERATE § 06001.1003
CLIENT/SERVER
INTERACTION USING
PREDICTIVE REQUESTS §

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

To the Office:

In response to the Final Office Action mailed November 25, 2008, the Applicant respectfully requests a panel review pursuant to the Pre-Appeal Brief Conference Pilot Program. 1296 Off. Gaz. Pat. Off. 67 (12 July 2005, extended 10 January 2006). A Notice of Appeal is filed herewith. This Request is filed within three months of the mailing date of the Final Office Action and concurrently with a Notice of Appeal, and thus is believed to be filed timely. The Applicant believes that pre-appeal review is warranted because the rejections of record are clearly improper and factually deficient.

It is believed that extensions of time or fees for net addition of claims are not required, beyond those, which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. §1.136(a), and any fees required for such petitions (including fees for net addition of claims) are hereby authorized to be charged to the attorney's Deposit Account No. 50-3479.

Status of Claims

Twelve (12) claims are pending in the application arranged in two claim sets with the independent claims being claims 1 and 11. Claims 2, 7-9 and 21 depend either directly or indirectly from claim 1. Claims 12, 15 and 17-19 depend either directly or indirectly from claim 11. Claims 3-6, 10, 13, 14, 16, 20 and 22-23 have been canceled.

Claims 1, 2, 7-8, 11, 12, 15, 17-18 and 21 stand rejected under 35 U.S.C. 102(e) as being anticipated by United States Number 7,047,485 awarded to Klein et al. and, claims 9 and 19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Klein et al in view of Official Notice. The applicant respectfully disagrees with the Office and states that the reference is insufficient support for rejecting the pending claims because the reference, either alone or in conjunction with Official Notice does not describe, suggest or teach each and every element recited in the claims, nor render the claims as obvious.

Basis of Office's Error

The applicant has twice attempted to point out how the Klein reference relied upon by the office does not describe, suggest or teach elements that are recited in the independent claims of the application. The office continues to rely on the Klein reference but continues to fail to show each and every element recited in the claim.

Klein is focused on a completely different operation than what is being recited in the claims. Klein focuses on pre-caching web pages during the idle time that occurs when a web browser is displaying a web page and prior to a new web page being requested. As a result, the needed web pages are already in the web browser cache and available to the web browser immediately. [Klein col. 3 lines 36-45] The claims do not read on such an activity. The recited claims are working at a lower level in the process and are working independently from a browser, a browser cache etc. to accelerate obtaining objects for a currently requested web page, not a web page that is anticipated to be requested. However, the office continues to try to stretch the Klein reference over the present claims and there simply is no correlation between the two.

The office is trying to apply a reference that is directed towards solving a completely different problem from that recited in the claims, and in doing so either has to redefine the reference or omit portions of the recited claims. The office has failed to show an equivalent for

the recited predictive server and client agent and in particular, elements that operate as claimed. As such, the applicants submit that it is a clear error on the part of the Office.

Argument 1

The Klein reference does not describe, suggest or teach the element in which “the predictive server analyzes, at the predictive server analyzer unit, a first response that is received from said server acting on a request for a web page”.

The office’s rejection of claim 1 is erroneous for at least the reason that the office fails to consider the underlined element, namely that the “first response is received from the server.” In rejecting this claim, the office alleges that column 5, lines 28-38 describe the element of “wherein the predictive server analyzes, at the predictive server analyzer unit, a first response to request for a web page”. The office totally omits, and does not address at a later time, the element of “the first response being received from said server.”

Klein describes sending a request for a web page to a web server 112. Col. 5 lines 28-31. The web server 112 can process this request or forward it to an application server 114. Col. 5 lines 31-38. The web server 112 then receives a resultant web page built by local processing or web application 114. Col 5, lines 39-41. Other irrelevant activities are also described and then the web page is transmitted to the web browser 110 over the network 102. Col. 5, line 66 to col. 6 line 1. If the web page includes a tag for Java Applet program, this Java Applet program can be requested over the network by the web browser 110 and once received, executed as a program. Col. 6 lines 1-8.

These passages, as well as the entire Klein reference fails to describe a predictive server receiving a response from the server acting on a request for a web page.

Argument 2

The office has failed to show any equivalent in Klein to the claimed predictive server. There is nothing in Klein that describes, suggests or teaches a predictive server that receives a first response from a server in response to a request for a web page. The office alleges that the web agent 116 is the equivalent of the predictive server. However, the office fails to show how the web agent 116 issues predictive requests to the server and forwards the first response to the predictive request to the client agent.

The office has not presented the following analysis which the applicant submits is the closest that Klein can come to describing the claims. That is of equating the Java Applet program that is invoked and running in conjunction with the web browser 110 on client platform 104 to the recited predictive server. Nonetheless, even in such a view, Klein fails to describe, suggest or teach the recited elements. The Java Applet interacts with the web server 112 and the web agent 116 to identify most probably web pages or web page objects that are most often accessed by a web browser given the currently viewed web page. This is NOT what the claimed invention is directed towards. The claimed invention focuses on processing a response from a server to a request for a web page. It is clear from the claim language that this is a process that is being performed while a web page is being fetched and generated NOT while the web browser is waiting idle for a user to make another request.

Thus, there is no relevant equivalent in operation between the recited claims and Klein, and as such, it is erroneous to attempt to stretch and redefine the elements of Klein to read on the recited claims. In attempting to operate in such a manner, the office tends to disregard recited elements of the claim as in the present case for "a first response that is received from said server".

Argument 3

The office equates the recited element of the client agent to the Java Applet 124 described in Klein. However, as is clear from the Klein reference, the Java Applet 124 was not even active at the time that the first response to a requested web page is transferred to the browser 110, Klein teaches that the browser 110 requests the Java applet 124 after receiving and analyzing the first response [Klein at Col. 5 line 66- Col. 6 line 8 and in Col. 9 lines 24-31]. As such, the Java Applet 124 cannot be the equivalent of the client agent which certainly must exist in order to receive the first response, analyze it and forward it to the client (the browser). Thus, the office cannot and must not equate the Java Applet 124 to the recited client agent.

With regards to claim 1, the current language recites a predictive server that receives a first response from the server acting on a request for a web page. The office has failed to show such an element in Klein and further, has failed to present a scenario in Klein in which a predictive server and a client agent can be equated to components described in Klein and operate

as recited in claim 1.

Thus, the applicant respectfully submits that claim 1 is allowable over Klein.

With regards to claim 2, this claim depends directly from allowable claim 1, and as such, is also in condition for allowance.

With regards to claims 7-9, these claims depend either directly or indirectly from allowable claim 1, and as such, are also in condition for allowance.

With regards to claim 11, the arguments presented above with regards to claim 1 also apply in support of the allowance of claim 11. Thus, claim 11 is allowable over Klein.

With regards to claim 12, this claim depends directly from allowable claim 11, and as such, is also in condition for allowance.

With regards to claim 15, this claim depends directly from allowable claim 11, and as such, is also in condition for allowance.

Conclusion

Thus, the applicant has presented arguments and statements showing that the Office has erred in its current rejection of the pending claims. The applicant believes that the Office's consideration of the recited elements of the claims and the lack of their description in the cited reference will confirm to the Office that these claims are allowable of Klein.

If the Office has any questions or if there are any actions that can be handled through an Examiner's Amendment, the applicant requests the Office to contact the attorney of record using the below-provided contact information.

Respectfully submitted,

/Gregory Scott Smith/

By: _____

Gregory Scott Smith
Reg. No. 40,819
Attorney for Applicant

Smith Frohwein Tempel Greenlee Blaha LLC
Two Ravinia Drive, Suite 700
Atlanta, Georgia 30346
(770) 804-9070